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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMERICAN STEAMSHIP OWNERS MUTUAL
PROTECTION AND INDEMNITY ASSOCIATION,
INC.,

No. 04 Civ. 04309 (LAK) (JCF)

CLERK'S CHAMBER

(ECF Case)

Plaintiff,

- v -

ALCOA STEAMSHIP CO., INC., *et al*

STIPULATION AND ORDER
REINSTATING COMPLAINT
AGAINST LOVELAND HOLDING
COMPANY INC. AND HENDRY
CORPORATION

Defendants.

WHEREAS, Loveland Holding Company Inc. ("Loveland") and Hendry Corporation ("Hendry") were both originally named as Defendants in this proceeding; and

WHEREAS, Loveland and Hendry both filed motions to dismiss the complaint on grounds of accord and satisfaction and res judicata, respectively; and

WHEREAS, both motions have been referred to Magistrate Francis for further handling; and

WHEREAS, Plaintiff, American Steamship Owners Mutual Protection and Indemnity Association, Inc. (the "Club")'s time to respond to both motions was adjourned by stipulation of the parties, both so ordered by Magistrate Francis, copies of which are annexed hereto as Exhibits "1" and "2"; and

WHEREAS, the Loveland Stipulation and Order expressly provided that the motion was adjourned *sine die* pending the Court's resolution of the ultimate issues herein but the Hendry Stipulation did not; and

WHEREAS, while the Club's opposition to both motions was so adjourned, Magistrate Francis conducted a telephone conference with the parties on June 27, 2006 in which the parties advised the Court that they had agreed that the Hendry motion would also be adjourned pending the Court's determination of the Club's obligations in respect of unreported closed year occupational disease claims in the main action, as the prior Loveland Stipulation and Order had expressly provided, and Judge Francis orally endorsed that agreement; and

WHEREAS, this Court hereafter entered two Orders dated October 4, 2006, copies of which are attached as Exhibits "3" and "4", granting Loveland and Hendry's motions as unopposed and dismissed the complaint as to Loveland and Hendry; and

WHEREAS, counsel for the Club, Loveland and Hendry all agreed that the October 4, 2006 Orders were mistakenly entered; and

WHEREAS, the Club brought this situation to Magistrate Francis' attention by letter dated October 5, 2006, a copy of which is annexed as Exhibit "5"; and

WHEREAS, by telephone conference with Magistrate Francis on October 24, 2006 counsel for Loveland, Hendry and the Club all confirmed that the motions to dismiss were to have been adjourned as outlined above and magistrate Francis agreed; and

WHEREAS, Magistrate Francis directed the parties to submit a Stipulation and Order setting forth the facts and directing vacation of the October 4, 2006 Orders and reinstatement of the Complaint on the terms agreed.

NOW, THEREFORE, it is hereby stipulated and agreed by the undersigned counsel for Loveland, Hendry and the Club that (1) the Court's Orders of October 4, 2006 should be vacated,

(2) the Complaint against Loveland and Hendry should be reinstated. and (3) Loveland and Hendry's motion to dismiss should be deemed adjourned pending the Court's determination of the Club's obligations in respect of unreported closed year occupational disease claims in the main action.

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Protection & Indemnity Assoc., Inc.

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SO ORDERED:

Kent Kapt
U.S.D.J.

1/8/07